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CV 10 80 189MISC

24 **IN THE UNITED STATES DISTRICT COURT**
 25 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 26 **WESTERN DIVISION**

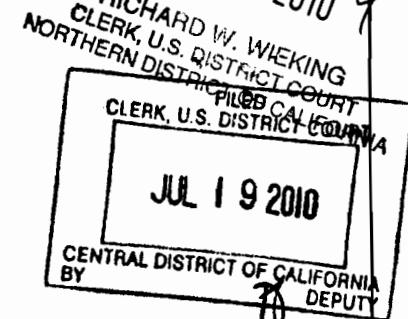
27 **UNITED STATES OF AMERICA,**

28 **Plaintiff,**

v.

GKM SBIC, L.P.

Defendant.



JS-6

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10 JUN 2010

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29) No. CV 10 4316
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31) Consent Order

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2 Before this Court is the Complaint by the United States of America,
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4 on behalf of the United States Small Business Administration ("SBA"), for
5 the appointment of the SBA as Receiver for GKM SBIC, LP ("GKM"). The
6 Court, being fully advised as to the merits, and based upon the consent of the
7 parties that this order be entered on or after June 1, 2010, believes this relief
8 should be granted.
9

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**
11

12 1. Pursuant to the provisions of 15 U.S.C. § 687c, this Court shall
13 take exclusive jurisdiction of GKM, and all of its assets, wherever located,
14 and the United States Small Business Administration ("SBA"), is hereby
15 appointed receiver ("the Receiver") of GKM to serve without bond until
16 further order of this Court. The Receiver is appointed for the purpose of
17 administering, marshalling and, if necessary, liquidating all of GKM's assets
18 to satisfy the claims of creditors therefrom in the order of priority as
19 determined by this Court.
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22 2. The Receiver shall have all powers, authorities, rights and
23 privileges heretofore possessed by the general partners, managers, officers,
24 and directors of GKM under applicable state and federal law and by the
25 Certificate of Limited Partnership and Partnership Agreement of said
26 partnership, in addition to all powers and authority conferred upon the
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1 Receiver by the provisions of 15 U.S.C. § 687c and 28 U.S.C. § 754. The
2 general partners, managers, directors, officers, employees and agents of GKM
3 are hereby dismissed. Such persons shall have no authority with respect to
4 GKM's operations or assets, except as may hereafter be expressly granted by
5 the Receiver. The Receiver shall assume and control the operation of GKM
6 and shall pursue and preserve all of its claims.

7
8 3. The past and/or present officers, directors, agents, managers,
9 general partners, accountants, attorneys and employees of GKM, as well as all
10 those acting in their place, are hereby ordered and directed to turn over to the
11 Receiver forthwith all books, records, documents, accounts and all other
12 instruments and papers of said partnership and all other assets and property of
13 the partnership, whether real or personal. GKM shall furnish a written
14 statement within five (5) days after the entry of this Order, listing the identity,
15 location and estimated value of all assets of GKM as well as the names,
16 addresses and amounts of claims of all known creditors of GKM. All persons
17 having control, custody or possession of any assets or property of GKM,
18 including its former General Partners are hereby directed to turn such property
19 over to the Receiver.

20
21 4. The Receiver shall promptly give notice of its appointment to all
22 known officers, directors, agents, managers, general partners, employees,

1 limited partners, creditors, debtors and agents of GKM. All persons and
2 entities owing any obligations or debts to GKM shall, until further order of
3 this Court, pay all such obligations in accordance with the terms thereof to the
4 Receiver, and its receipt for such payments shall have the same force and
5 effect as if GKM had received such payments.

6
7 5. The Receiver is hereby authorized to open such Receiver's bank
8 accounts, at banking or other financial institutions, to extend credit on behalf
9 of GKM, to utilize SBA personnel, and to employ such other personnel as
10 necessary to effectuate the operation of the receivership including, but not
11 limited to, attorneys and accountants, and is further authorized to expend
12 receivership funds to compensate such personnel in such amounts and upon
13 such terms as the Receiver shall deem reasonable in light of the usual fees and
14 billing practices and procedures of such personnel. The Receiver is not
15 required to obtain Court approval prior to the disbursement of receivership
16 funds for payments to personnel employed by the Receiver or payments for
17 expenses incidental to administration of the Receivership. In addition, the
18 Receiver is authorized to reimburse the SBA or its employees for travel
19 expenses incurred by SBA personnel in the establishment and administration
20 of the receivership. The Receiver may, without further order of this Court,
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1 transfer, compromise, or otherwise dispose of any claim or asset, other than
2 real estate, which would result in net proceeds to the Receiver.
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4 6. In accordance with the Federal Rules of Civil Procedure and if
5 so requested by the Receiver, GKM's past and/or present officers, directors,
6 agents, managers, general partners, limited partners, employees, and other
7 appropriate persons (including, without limitation, the defendant's portfolio of
8 small business concerns and of banks or other financial institutions doing
9 business with defendant and/or defendant's portfolio of small business
10 concerns) shall answer or provide answers , to all questions put to them by the
11 Receiver regarding the business of GKM, or any other matter relevant to the
12 operation or administration of the GKM receivership or the collection of
13 funds due to GKM. In the event that the Receiver deems it necessary to
14 require the appearance of the aforementioned persons, the production of
15 documents, information, or any other form of discovery concerning the assets,
16 property or business assets of GKM or any other matter relevant to the
17 operation or administration of the Receivership or the collection of funds due
18 to GKM, the Receiver shall provide notice of such to such persons in
19 accordance with the Federal Rules of Civil Procedure.
20
21 7. In accordance with 15 U.S.C. 687c, the parties or prospective
22 parties to any and all civil legal proceedings wherever located, including, but
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1 not limited to arbitration proceedings, bankruptcy or foreclosure actions,
2 default proceedings, or any other proceedings involving GKM or any assets of
3 GKM, involving GKM or its present or past officers, directors, managers, or
4 general partners (including the managers or members of such general partner)
5 or the Receiver, sued for, or in connection with, any action taken by them
6 while acting in such capacity are hereby enjoined from taking any action,
7 including discovery, commencing or continuing any legal proceeding of any
8 nature in connection with any proceeding until further Order of this Court.
9

10 8. In accordance with 15 U.S.C. §687c, all civil legal proceedings
11 wherever located, including arbitration proceedings, foreclosure activities,
12 bankruptcy actions, or default proceedings, but excluding the instant
13 proceeding, involving GKM or any of its assets or any action of any nature
14 taken by GKM's present or past officers, directors, managers, or general
15 partners (including the managers or members of such general partner) sued
16 for, or in connection with, any action taken by them while acting in their
17 official capacity, are stayed in their entirety, and all Courts having any
18 jurisdiction thereof are enjoined from taking or permitting any action until
19 further Order of this Court.
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21 9. GKM and its past and/or present directors, officers, managers,
22 general partners, agents, employees and other persons acting in concert or
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1 participation therewith be, and they hereby are, enjoined from either directly
2 or indirectly taking any actions or causing any such action to be taken which
3 would dissipate the assets and property of GKM to the detriment of the
4 Receiver appointed in this cause, including but not limited to destruction of
5 partnership records, or which would violate the Small Business Investment
6 Act of 1958, as amended, (the "SBIA"), 15 U.S.C. Section 661 et seq., or the
7 regulations promulgated thereunder, (the "Regulations"), 13 C.F.R. § 107.1 et
8 seq.

10. The Receiver is authorized to borrow on behalf of GKM, from
11 the SBA, up to \$1,000,000, and is authorized to cause GKM to issue
12 Receiver's Certificates of Indebtedness in the principal amounts of the sums
13 borrowed, which certificates will bear interest at or about 10 percent per
14 annum and will have a maturity date no later than 18 months after the date of
15 issue. Said Receiver's Certificates of Indebtedness shall have priority over all
16 other debts and obligations of GKM, excluding administrative expenses of the
17 Receivership, whether presently existing or hereinafter incurred, including
18 without limitation any claims of partners of GKM.

19. This Court determines and adjudicates that GKM has violated 13
20 C.F.R. § 107.1830(b) and 13 C.F.R. § 107.507(a) of the Regulations as
21 alleged in the Complaint filed in this matter. After completing its activities in

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1 accordance with this Order, the Receiver may recommend that GKM's license
2 as an SBIC be revoked.
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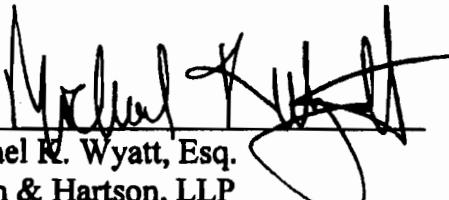
4 DATED: 7/19/10

5
6 *Christina A. Snyder*
7 UNITED STATES DISTRICT JUDGE

8 Presented by:
9

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12 LEON W. WEIDMAN
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21 Michael R. Wyatt, Esq.
22 Hogan & Hartson, LLP
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